

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

OCT 20 2014

JAMES W. McCORMACK, CLERK  
By: 

Gary Clayton,

Plaintiff,

v.

Apollo Credit Agency, Inc.; and DOES 1-10,  
inclusive,

Defendants.

Civil Action No.: 1:14cv128-DPM

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

This case assigned to District Judge Marshall  
and to Magistrate Judge Valpe

**COMPLAINT**

For this Complaint, the Plaintiff, Gary Clayton, by undersigned counsel, states as follows:

**JURISDICTION**

1. This action arises out of Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), Arkansas Fair Debt Collection Practices Act, A.C.A. § 17-24-501, *et seq.* ("AFDCPA"), and the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA").

2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

4. The Plaintiff, Gary Clayton ("Plaintiff"), is an adult individual residing in Tumbling Shoals, Arkansas, and is a "person" as defined by 47 U.S.C. § 153(39).

5. Defendant Apollo Credit Agency, Inc. (“Apollo”), is a Colorado business entity with an address of 3501 South Teller Street, Lakewood, Colorado 80235-2011, operating as a collection agency, and is a “debt collector” as the term is defined by 15 U.S.C. § 1692a(6), A.C.A. § 17-24-502(5)(A), and is a “person” as defined by 47 U.S.C. § 153(39).

6. Does 1-10 the “Collectors”) are individual collectors employed by Apollo and whose identities are currently unknown to the Plaintiff. One or more of the Collectors may be joined as parties once their identities are disclosed through discovery.

7. Apollo at all times acted by and through one or more of the Collectors.

### **ALLEGATIONS APPLICABLE TO ALL COUNTS**

#### **A. The Debt**

8. An individual other than the Plaintiff (the “Debtor”) allegedly incurred a financial obligation (the “Debt”) to an original creditor (the “Creditor”).

9. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes and which meet the definition of a “debt” under 15 U.S.C. § 1692a(5) and A.C.A. § 17-24-502(4).

10. The Debt was purchased, assigned or transferred to Apollo for collection, or Apollo was employed by the Creditor to collect the Debt.

11. The Defendants attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C. § 1692a(2) and A.C.A. § 17-24-502(1).

#### **B. Apollo Engages in Harassment and Abusive Tactics**

12. Within the last year, Apollo contacted Plaintiff in an attempt to collect the Debt.

13. The calls were placed to Plaintiff’s cellular phone, number 501-xxx-1528.

14. The calls were placed from telephone numbers 602-387-2733, and 501-235-8811.

15. When Plaintiff answered the phone, he was met with a prerecorded voice which said “please hold for the next representative”. After the prerecorded voice, Plaintiff would wait on the line and would never be connected to a live representative.

16. The foregoing is indicative of a predictive dialer, an automated telephone dialing system (ATDS) under the TCPA.

17. Plaintiff does not know how Apollo acquired his cellular phone number, and never provided Apollo with express consent to place calls to his cellular phone.

18. Apollo placed over ten automated calls to Plaintiff’s cellular phone without Plaintiff’s consent.

19. In addition to the automated calls, on several occasions Plaintiff received calls from Apollo in which he was met with a live Collector immediately upon answering the phone.

20. During several live calls, the Collector stated they were attempting to reach the Debtor “Laura”. Plaintiff informed the Collector that Apollo was dialing the wrong number, and requested that Apollo cease calling his cellular phone attempting to reach the Debtor.

21. Despite the knowledge that plaintiff was not the Debtor, Apollo continued to repeatedly call Plaintiff’s cellular phone.

22. The repeated calls caused Plaintiff significant anxiety and concern.

**C. Plaintiff Suffered Actual Damages**

23. The Plaintiff has suffered and continues to suffer actual damages as a result of the Defendants’ unlawful conduct.

24. As a direct consequence of the Defendants’ acts, practices and conduct, the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

**COUNT I**  
**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT –**  
**15 U.S.C. § 1692, et seq.**

25. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

26. The Defendants' conduct violated 15 U.S.C. § 1692b(3) in that Defendants contacted Plaintiff in regards to the Debtor's debt on numerous occasions, without being asked to do so.

27. The Defendants' conduct violated 15 U.S.C. § 1692d in that Defendants engaged in behavior the natural consequence of which was to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt.

28. The Defendants' conduct violated 15 U.S.C. § 1692d(5) in that Defendants caused a phone to ring repeatedly and engaged the Plaintiff in telephone conversations, with the intent to annoy and harass.

29. The Defendants' conduct violated 15 U.S.C. § 1692f in that Defendants used unfair and unconscionable means to collect a debt.

30. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

31. The Plaintiff is entitled to damages as a result of Defendants' violations.

**COUNT II**  
**VIOLATIONS OF THE ARKANSAS FAIR DEBT COLLECTION PRACTICES ACT –**  
**A.C.A. § 17-24-501, et seq.**

32. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

33. The Defendants' conduct violated A.C.A. § 17-24-503(3) in that Defendants contacted Plaintiff in regards to the Debtor's debt on numerous occasions, without being asked to do so.

34. The Defendants' conduct violated A.C.A. § 17-24-505(a) in that Defendants engaged in behavior the natural consequence of which was to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt.

35. The Defendants' conduct violated A.C.A. § 17-24-505(b)(5) in that Defendants caused a phone to ring repeatedly and engaged the Plaintiff in telephone conversations, with the intent to annoy and harass.

36. The Defendants' conduct violated A.C.A. § 17-24-507(a) in that Defendants used unfair and unconscionable means to collect a debt.

37. The foregoing acts and omissions of the Defendants constitute numerous and multiple violations of the AFDCPA, including every one of the above-cited provisions.

38. The Plaintiff is entitled to damages as a result of Defendants' violations.

**COUNT III**  
**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –**  
**47 U.S.C. § 227, et seq.**

39. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

40. At all times mentioned herein and within the last four years, Defendants called Plaintiff on his cellular telephone using an automatic telephone dialing system (“ATDS” or “Predictive Dialer”) and by using a prerecorded or artificial voice.

41. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (FCC) defines a Predictive Dialer as “a dialing system that automatically dials consumers’ telephone numbers in a manner that “predicts” the time when a consumer will answer the phone and a [representative] will be available to take the call...”2003 TCPA Order, 18 FCC 36 Rcd 14022. The FCC explains that if a representative in not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

42. Defendants’ telephone systems have some earmarks of a Predictive Dialer.

43. Often times when Plaintiff answered the phone, he would hear a prerecorded voice which instructed Plaintiff to hold for a live representative. After the prerecorded voice, Defendants’ telephone system did not connect the call to a live representative and would leave the Plaintiff listening to dead air.

44. Defendants’ Predictive Dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

45. Plaintiff never provided his cellular telephone to Defendants and never provided his consent to be contacted on his cellular telephone, and in fact instructed Defendants to stop all calls to him.

46. The calls from Defendants to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

47. Each of the aforementioned calls made by Defendant constitutes a violation of the TCPA.

48. As a result of each of Defendants’ negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

49. As a result of each of Defendants’ knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

#### **PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff prays that judgment be entered against the Defendants:

1. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) and A.C.A. § 17-24-512(a)(1) against the Defendants;
2. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A) and A.C.A. § 17-24-512(a)(2)(A) against the Defendants;
3. Costs of litigation and reasonable attorney’s fees pursuant to 15 U.S.C. § 1692k(a)(3) and A.C.A. § 17-24-512(3);
4. Actual damages pursuant to A.C.A. 4-88-113(f) against the Defendants;
5. Costs of litigation and reasonable attorney’s fees pursuant to A.C.A. 4-88-113(f) against the Defendants;
6. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
7. Punitive damages; and

8. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: October 14, 2014

Respectfully submitted,

By 

Sergei Lemberg, Esq.

LEMBERG LAW, L.L.C.

1100 Summer Street, 3<sup>rd</sup> Floor

Stamford, CT 06905

Telephone: (203) 653-2250

Facsimile: (203) 653-3424

Attorneys for Plaintiff